



GAIL FARBER, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100  
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE

REFER TO FILE: **EP-2**

December 1, 2009

TO: Each Supervisor

FROM: Gail Farber *Gail Farber*  
Director of Public Works

### **FINANCIAL ASSURANCE MECHANISMS FOR CLOSED LANDFILLS**

On December 15, 2009, the California Integrated Waste Management Board will be considering the adoption of State regulations which will strengthen existing regulations on long-term maintenance and financial assurance for closed landfills. The proposed regulations would extend the duration of financial responsibility for closed landfills, and thereby further protect the County from being exposed to long-term post-closure maintenance costs.

On November 6, 2009, the Sanitation Districts of Los Angeles County (Districts) requested the County to submit a letter of opposition to the proposed regulations since the proposed regulations impact the Districts' current trust fund financial assurance mechanism for those landfills they operate (see attached).

We reviewed the proposed regulations and recommend the County not send an opposition letter to the California Integrated Waste Management Board since the proposed regulations strengthen the State's oversight of closed landfills, further protect local governments including the County from post-closure maintenance financial liability, and are consistent with the latest requirements of the County-issued conditional use permits for Puente Hills and Sunshine Canyon Landfills.

#### Background

Existing State regulations require a landfill owner/operator to provide financial assurance such as a trust fund, pledge of revenue, and letter of credit, for long-term care and maintenance of closed landfills. The financial assurance is only required for the first 30 years with year-by-year reductions.

The proposed regulations, which have been developed in concert with stakeholders including Public Works, the League of California Cities, the California State Association of Counties and the Los Angeles County Integrated Waste Management Task Force, require landfill owners/operators to maintain a revolving 30-year financial assurance. Under specified performance criteria, landfill owners/operators may request the California Integrated Waste Management Board to reduce the amount of financial assurance every five years starting with the fifth year to a level no less than 15 years of financial assurance. If the California Integrated Waste Management Board determines that a site needs maintenance beyond the first 30 years of post-closure period, it can withhold the remaining funds or increase the level of financial assurance for as long as maintenance is required to protect public health and safety and the environment.

The proposed regulations would reduce long-term financial exposure to the County under the Federal Comprehensive Environmental Response, Compensation and Liability Act, since it could be liable for waste originating from the unincorporated County areas, the Garbage Disposal Districts, County operations, as well as landfills permitted by the County. For example, the County has incurred settlement payments of \$2.4 million for the environmental cleanup cost from the closed Operating Industries Landfill (located in the City of Monterey Park), and \$1.8 million for environmental cleanup cost from the closed Cal Compact Landfill (located in the City of Carson).

#### Calabasas Landfill

The proposed regulations would also impact Calabasas Landfill, which is owned by the County and currently operated by the Districts. Under a Joint Powers Agreement, the County is responsible for the long-term care and maintenance of the Landfill once it closes. Alternative financial assurance mechanisms for Calabasas Landfill may need to be explored, including replacing the existing trust fund with another financial assurance mechanism such as a pledge of revenue. For comparative purposes, the pledge revenue mechanism is utilized by the Counties of Orange, Riverside, and San Bernardino.

#### Recommendation

It is recommended that the County not send an opposition letter to the California Integrated Waste Management Board since the proposed regulations strengthens the State's oversight of closed landfills, further protects local governments including the County from post-closure maintenance financial liability, and is consistent with the County's newly issued conditional use permit requirements for Puente Hills and Sunshine Canyon Landfills.

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However, if your Board desires to provide a letter of opposition, the Board may consider directing Public Works to send the letter on behalf of the County prior to December 15, 2009, since the California Integrated Waste Management Board is scheduled to begin considering the item at that time.

If you have any questions, please contact me or your staff may call Pat Proano of our Environmental Programs Division at (626) 458-3500.

EKT

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Attach.

cc: Chief Executive Office (Lari Sheehan, Eddie Washington)  
County Counsel  
Department of Public Health  
Department of Regional Planning



## COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400  
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998  
Telephone: (562) 699-7411, FAX: (562) 699-5422  
www.lacsd.org

STEPHEN R. MAGUIN  
Chief Engineer and General Manager

November 6, 2009

RECEIVED  
2009 NOV 16 PM 3:14  
CHIEF EXECUTIVE OFFICE

County Sanitation Districts  
of Los Angeles County  
Member Cities

Dear City Managers/City Administrators:

### Financial Assurance Mechanisms for Landfill Postclosure Maintenance

At its October 28, 2009 meeting, the County Sanitation Districts of Los Angeles County Personnel Committee (comprised of the Chairpersons of the Sanitation Districts) received a report that the California Integrated Waste Management Board (CIWMB) is proposing to modify existing financial assurance requirements for landfills. Because the proposed changes would dramatically increase costs for use of trust funds for financial assurance, the Sanitation Districts are preparing to change our current financial assurance mechanism from a trust fund to a pledge of revenue. While intended to further protect the state from financial liability, the regulations in effect render the use of a trust fund, the most secure financial assurance mechanism available, infeasible from a local government cost standpoint. After the presentation of the CIWMB proposal, the Personnel Committee members requested that a sample letter of opposition to the proposed regulations be provided to each District's member city.

Current CIWMB regulations require that, at closure, landfill operators demonstrate availability of funding for thirty years of postclosure maintenance. The Sanitation Districts have long been setting aside money in trust funds for this purpose even prior to the implementation of the regulatory requirement in the early 1990s. The proposed regulations would now require a "rolling" thirty years of funding such that, at any given time in the postclosure period, thirty years of funding must remain in the trust fund. Money set aside in the trust fund for actual maintenance activities, amounting to over \$300 million, would instead be required to be frozen in the fund for an indefinite period of time. Therefore, the Sanitation Districts are proposing to discontinue use of the trust fund mechanism – again the most secure form of financial assurance – and use a pledge of revenue.

Attached for your consideration is a sample opposition letter to the proposed regulations requesting that the requirements for trust funds remain unchanged. If you have any questions, please call me at (562) 908-4238 or Grace Chan, Assistant Chief Engineer and Assistant General Manager at (562) 908-4233.

Very truly yours,

Stephen R. Maguin

SRM:ksc

Enclosures

November 6, 2009

Chair Margo Brown and Board Members  
California Integrated Waste Management Board  
P.O. Box 4025  
Sacramento, CA 95812

Dear Chair Brown and Board Members:

**Proposed Regulations Regarding Closure, Postclosure Maintenance, and  
Corrective Action Cost Estimates and Related Financial Assurance Demonstrations**

The City of <<insert city name here>> (City) strongly requests that the California Integrated Waste Management Board (CIWMB) not adopt the subject proposed financial assurance (FA) regulations as written and leave requirements for trust funds unchanged. The proposed regulations would force landfill operators such as the Sanitation Districts of Los Angeles County to discontinue using trust funds for postclosure activities, which unlike all other FA demonstrations, is actual cash in the bank. There is no safer form of assurance to the state and to local government than trust funds, yet this is the mechanism that will be most negatively impacted by the proposed regulations.

For several decades now, the Sanitation Districts have responsibly set aside a portion of landfill revenues into a trust fund for the sole purpose of using the money to maintain and care for their sites after closure. The proposed regulations would require a "rolling" thirty-year funding level for an indefinite period of time, which would prevent the Sanitation Districts from accessing money already set aside for postclosure care. For this reason, the Sanitation Districts are preparing to abandon the trust fund option for financial assurance and establish a pledge of revenue.

We respectfully request that the CIWMB retain existing requirements for trust funds.

cc: Mark Leary, CIWMB Executive Director